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John Tugang Jeli v Government of Malaysia

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HIGH COURT (MIRI) — CIVIL APPEAL NO MYY-12A-5/9 OF 2013
STEPHEN CHUNG J
24 JANUARY 2014

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Revenue Law — Income tax — Assessment — Whether tax payer bound by amount of tax claimed in certificate issued by Director-General of Inland Revenue under s 142(1) of the Income Tax Act 1967 ('the Act') — Whether tax payer failed to challenge correctness of certificate or fact it was sent to his solicitors — Whether notices of assessment sent to tax payer at his last-known address deemed served on him pursuant to s 145(1) of the Act — Whether fact tax payer made part-payments towards assessments showed he was aware of them

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The sessions court had allowed an application by the respondent to enter summary judgment against the appellant for personal income tax and penalties thereon he owed for the years of assessment 2004–2010. The respondent contended that the notices of assessment of tax payable for the respective years concerned were sent by ordinary post to the appellant's last known address and they were never returned as undelivered. The respondent also said the appellant could not claim ignorance as he made several part-payments towards the assessed amounts and what was claimed in the summary judgment application was the balance due. The appellant's main contention in his instant appeal was that he did not receive any notices of assessment from the respondent for the periods of assessment concerned.

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Held, dismissing the appeal:

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(1) There was no merit in the appeal. The affidavit evidence showed the notices of assessment were addressed to the appellant at his given address. Under s 145(1) of the Income Tax Act 1967 ('the Act'), the notices were deemed to have been served. Obviously, the appellant had received or had notice of the assessments as the facts showed he had made payments towards settlement of the taxes assessed for each of the material years of assessment (see paras 16 & 19).

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(2) There was no merit in the appellant's complaints. The facts showed he never complained that the assessments were incorrect but instead made payments towards the sums assessed. His complaint that he did not know or was not aware of the assessments was only made after the suit against him was filed in the sessions court. The certificate issued by the Director of Inland Revenue, Miri, under s 142(1) of the Act, of the total tax due from the appellant and sent to his solicitors was sufficient evidence and

authority for the court to give judgment on the amount claimed. The appellant never complained the certificate was not received or that there was any manifest error on its face or that the assessments were wrong or incorrect (see paras 17–18).

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[Bahasa Malaysia summary]

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Mahkamah sesyen telah membenarkan permohonan oleh responden untuk memasukkan penghakiman terus terhadap perayu untuk cukai pendapatan persendirian dan penalti yang kena dibayar untuk tahun-tahun taksiran 2004–2010. Responden berhujah bahawa notis-notis taksiran cukai yang kena dibayar bagi tahun-tahun berkenaan masing-masing dihantar oleh pos biasa kepada alamat terakhir perayu yang diketahui dan ia tidak dikembalikan sebagai tidak dihantar. Responden juga menyatakan perayu tidak dapat mendakwa tidak tahu kerana dia membuat beberapa bahagian bayaran kepada jumlah yang ditaksirkan dan apa yang dituntut dalam permohonan penghakiman terus adalah baki yang kena dibayar. Hujahan utama perayu dalam rayuan ini adalah dia tidak menerima apa-apa notis taksiran daripada responden bagi tempoh taksiran berkenaan.

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Diputuskan, menolak rayuan:

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- (1) Tiada merit dalam rayuan ini. Keterangan afidavit menunjukkan notis-notis taksiran dialamatkan kepada perayu di alamat yang diberikannya. Di bawah s 145(1) Akta Cukai Pendapatan 1967 ('Akta'), notis-notis tersebut dianggap diserahkan. Jelas, perayu telah menerima atau mempunyai notis-notis taksiran seperti yang ditunjukkan fakta dia membuat bayaran kepada penyelesaian cukai yang ditaksir untuk setiap tahun-tahun taksiran yang material (lihat perenggan 16 & 19).
- (2) Tidak terdapat merit dalam aduan perayu. Fakta menunjukkan dia tidak pernah mengadu bahawa taksiran adalah tidak betul tetapi sebaliknya membuat bayaran-bayaran kepada jumlah yang ditaksirkan tersebut. Aduannya yang dia tidak tahu atau tidak sedar mengenai taksiran tersebut hanya dibuat selepas tindakan terhadapnya difailkan di mahkamah sesyen. Sijil yang dikeluarkan oleh Pengarah Hasil Dalam Negeri, Miri, di bawah s 142(1) Akta, daripada jumlah kesemua cukai yang kena dibayar daripada perayu dan dihantar kepada peguamnya adalah keterangan yang memadai dan autoriti untuk mahkamah memberi penghakiman atas jumlah yang dituntut. Perayu tidak pernah mengadu bahawa sijil tidak diterima atau terdapat kesilapan yang nyata atasnya atau bahawa taksiran adalah salah atau tidak betul (lihat perenggan 17–18).]]

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A Notes

For cases on assessment, see 10(2) *Mallal's Digest* (5th Ed, 2015) paras 2573–2572.

Cases referred to

- B** *Amanah Merchant Bank Bhd v Lim Tow Choon* [1994] 1 MLJ 413, SC (refd)
Cempaka Finance Bhd v Ho Lai Ying (trading as KH Trading) & Anor [2006] 2 MLJ 685; [2006] 3 CLJ 544, FC (refd)
MBF Finance Bhd v Tiong Kieng Seng [2001] MLJU 405; [2001] 4 CLJ 38, HC (refd)
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Legislation referred to

Income Tax Act 1967 77, 90(3), 99, 103(2), (4), (5A), 106(1), (3), 142(1), 145(1), (2), Form B

- D** *Kenny Yi (Yi & Co Advocates) for the appellant.*
Hirdah bt Azwan (Inland Revenue Board Miri) for the respondent.

Stephen Chung J:

- E** [1] On 16 August 2013, the sessions court judge entered judgment against the defendant (the appellant in this appeal) for RM131,725.42 plus interest at 5%pa thereon from date of judgment until full settlement pursuant to an application for summary judgment dated 28 June 2013.
- F** [2] The grounds of the application for summary judgment are: (a) the defendant was truly and justly indebted to the plaintiff for the sum; (b) the defendant had no defence at all to the plaintiff's claim; (c) a certificate issued under s 142(1) of the Income Tax Act 1967 signed by the Director of Inland
- G** Revenue Miri giving the name and address of the defendant and the amount of tax due and payable was sufficient evidence and authority for the court to give judgment; and (d) there were no triable issues in this application.
- H** [3] This is the defendant's appeal against the decision of the trial judge in entering judgment against the defendant. This appeal is by way of rehearing.
- [4] In the action filed in the sessions court, the plaintiff pleaded that the defendant failed to submit the income tax return form for individuals (Form B) under s 77 of the Income Tax Act 1967 for the year of assessment 2004–2010 on or before 30 June 2005, 30 June 2006, 30 June 2007, 30 June 2008, 30 June 2009, 30 June 2010, 30 June 2011 respectively.
- I** [5] It was pleaded that the tax for the year of assessment 2004–2010 respectively against the defendant had been assessed under sub-s 90(3) of the

Act and the tax assessed amounted to RM113,685, RM95,735, RM21,915, RM46,715, RM91,635, RM111,798 and RM29,982 respectively. A

[6] The plaintiff affirmed that the notice of assessment dated 28 July 2009, 28 July 2009, 28 July 2009, 28 July 2009, 1 December 2011 and 18 June 2012 respectively for each of the above year of assessment had been sent by ordinary post to the defendant's last known address. The plaintiff submitted that the notices of assessment had never been returned or undelivered. B

[7] The plaintiff affirmed that the defendant had made payments amounting to RM112,354, RM90,225, RM16,164, RM43,154, RM87,665, RM18,168 and RM29,687 respectively towards settlement of the above assessments leaving an outstanding balance of RM1,331, RM5,510, RM5,751, RM3,561, RM3,970, RM93,630 and RM295 respectively for the year of assessment 2004–2010 respectively. C D

[8] The plaintiff affirmed that the defendant failed to pay the tax as assessed in full within 30 days after service of the notices. Therefore a sum equal to 10% of the unpaid tax amounting to RM133.10, RM551, RM575.10, RM356.10, RM397, RM9,363 and RM29.50 had been levied accordance with the provisions of the Act for the year of assessments 2004–2010 respectively. E

[9] The plaintiff affirmed that since the defendant failed to settle the outstanding tax within 60 days from due date, a 5% increase amounting to RM7.20, RM303.05, RM316.30, RM195.85, RM218.35, RM5,149.65 and RM16.22 had also been imposed for the year of assessments 2004–2010 respectively. F

[10] The plaintiff submitted that it was entitled to recover the taxes together with all the penalties imposed against the defendant which were due and payable. It was submitted that the defendant failed to settle the outstanding taxes in full which were due and payable to the plaintiff for the year of assessment 2004–2010 respectively. The above aggregate sums due and owing amounted to RM131,725.42. G H

[11] The defendant contended that he did not receive any notice of assessment for the year of assessment for 2004–2010 respectively from the plaintiff. The defendant contended that as no notice of assessment for the years of assessment for 2004–2010 respectively was served on him by the plaintiff, the plaintiff was not entitled to resort to s 103(4) and (5A) of the Income Tax Act 1967 or the charging of the penalty of 10% of the tax unpaid and the further 5% on the balance unpaid. I

- A [12] Section 103(2) of the Act states that the tax payable under an assessment shall, on the service of the notice of assessment on the person assessed, be due and payable at the place specified in the notice whether or not that person appeals against the assessment.
- B [13] Section 106(1) of the Act stated that the tax due and payable be recovered by the government by civil proceedings as a debt due to the government. Section 106(3) of the Act provides that the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased.
- C [14] The plaintiff submitted that if the defendant was aggrieved by the assessment raised on it, he has the right to object and appeal against the assessments under s 99 of the same Act and such objection and appeal would be heard and decided by the Special Commissioners of Income.
- D [15] Section 145(1) of the Act provides that for the purposes of the Act notices may be served personally or by ordinary or registered post and sub-s (2) states that a notice relating to tax which is sent by ordinary or registered post shall be deemed to have been served on the person to whom it has been addressed.
- E [16] The affidavit evidence showed that the notices of assessment were addressed to the defendant at his given address at Pujut, Miri. Under s 145(1), the said notices were deemed to have been served. Obviously the defendant had received or had notice of the assessments made against him. The facts showed that the defendant had made payments towards settlement of the taxes assessed for each of the material year of assessment. Therefore he knew of the assessments and he made payments thereto. There is no merit that he did not know or did not receive or they were not served on him: see *Amanah Merchant Bank Bhd v Lim Tow Choon* [1994] 1 MLJ 413 and *MBF Finance Bhd v Tiong Kieng Seng* [2001] MLJU 405; [2001] 4 CLJ 38.
- F [17] The facts showed that the defendant did not complain that the assessments were incorrect. The defendant did not apply for instalment payments or for remission of the taxes assessed against him on the ground that he could not afford or due to poverty. Instead he had made payments towards the taxes assessed. After he had made the above payments he did not complain that he did not know or was not aware of the assessments made against him
- G [18] The facts showed that a certificate under s 142(1) of the Act signed by the Director of Inland Revenue, Miri giving the name and address of the
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defendant and the amount of tax due from him was issued to the defendant via his advocates Messrs Yi & Co Advocates. There was no complaint that his advocates did not receive the certificate or he did not know or was not aware of it. There was no complaint of any manifest error on the face of the certificate or that the assessments made against him were wrong or incorrect. The certificate was sufficient evidence of the amount due and sufficient authority for the court to give judgment for that amount: see *Cempaka Finance Bhd v Ho Lai Ying (trading as KH Trading) & Anor* [2006] 2 MLJ 685; [2006] 3 CLJ 544.

[19] On the facts and the above provisions in the Act, there is no merit in this appeal. The appeal is dismissed with costs of RM750 to be paid to the respondent.

Appeal dismissed.

Reported by Ashok Kumar

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